

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ERIC SHAWN RAY, #210440

VS.

COLLIN CO. SHERIFF’S OFFICE,
ET AL.

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CIVIL ACTION NO. 4:20cv856

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the Report and Recommendation of the United States Magistrate Judge in this action (the “Report”) (Dkt. #80), this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On January 22, 2024, the Magistrate Judge entered the Report (Dkt. #80), containing proposed findings of fact and recommendations that Collin County’s Motion to Dismiss (Dkt. #72) and Sheriff Jim Skinner, Lieutenant Christensen, Officer Shannon Young, and Officer Green’s Second Motion to Dismiss (Dkt. #73) be granted. The Magistrate Judge accordingly recommended the following: to the extent Plaintiff is requesting relief under RLUIPA, such a claim should be dismissed without prejudice for lack of subject-matter jurisdiction; Plaintiff’s claims under 42 U.S.C. § 1983 against Defendants Collin County, Sheriff Jim Skinner, Lieutenant Christensen, Officer Shannon Young, and Officer Green should be dismissed with prejudice; Plaintiff should not be given leave to amend; and this dismissal should count as a strike pursuant to 28 U.S.C. § 1915(g). Plaintiff filed objections. (Dkt. #81).

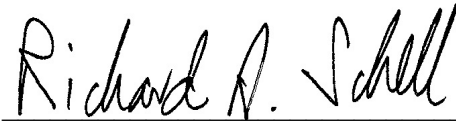
In the objections, Plaintiff appears to challenge Magistrate Judge Aileen Goldman Durrett’s authority to issue the Report, arguing that she “is not assigned to this case.” (Dkt. #81, p. 1). This case was originally referred to Magistrate Judge Kimberly C. Priest Johnson and then reassigned to Magistrate Judge Aileen Goldman Durrett. *See* Minute entry June 28, 2023. Thus,

Plaintiff's objection is without merit. To the extent Plaintiff is objecting to Magistrate Judge Kimberly C. Priest Johnson's earlier Report and Recommendation (Dkt. #61), that Report and Recommendation has already been adopted by the District Court (Dkt. #71), and objections concerning that Report and Recommendation are not relevant here. Finally, Plaintiff's objection that "there can be no strike pursuant to 28 U.S.C. [§] 1915(g) without appeal" (Dkt. #81, p. 2) is conclusory and without merit. A strike may be warranted for qualifying dismissals in both the district court and on appeal. *See Coleman v. Tollefson*, 575 U.S. 532, 538 (2015) (interpreting § 1915 as treating a dismissal in a district court as a "prior occasion" separate and apart from the appeal, noting "[t]he [IFP] statute repeatedly treats the trial and appellate stages of litigation as distinct"); *Prescott v. UTMB Galveston Texas*, 73 F.4th 315, 319 (5th Cir. 2023) ("The Supreme Court and the Fifth Circuit have held that a strike counts even if the case is pending on appeal."); *McCollum v. Lewis*, No. 21-11259, 2022 WL 3928526 at *1 (5th Cir. Aug. 31, 2022) (per curiam) (unpublished) ("Both the district court's dismissal of [the plaintiff's] claims as frivolous and this court's dismissal of the appeal as frivolous count as strikes for purposes of § 1915(g)."); *Hernandez v. Cooper*, No. 20-40607, 2021 WL 5444742 at *1 (5th Cir. Nov. 19, 2021) (per curiam) (unpublished) ("The dismissal of the appeal and the district court's dismissal of the complaint count as two strikes under 28 U.S.C. § 1915(g)."). Plaintiff fails to show that the Report is in error or that he is entitled to relief.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Plaintiff to the Report, the court concludes that the findings and conclusions of the Magistrate Judge are correct. Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the court.

It is therefore **ORDERED** that Collin County's Motion to Dismiss (Dkt. #72) and Sheriff Jim Skinner, Lieutenant Christensen, Officer Shannon Young, and Officer Green's Second Motion to Dismiss (Dkt. #73) are **GRANTED**. Plaintiff's RLUIPA claim is **DISMISSED WITHOUT PREJUDICE** for lack of subject-matter jurisdiction; Plaintiff's claims under 42 U.S.C. § 1983 against Defendants Collin County, Sheriff Jim Skinner, Lieutenant Christensen, Officer Shannon Young, and Officer Green are **DISMISSED WITH PREJUDICE**; this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g); and the Clerk of Court is directed to **CLOSE** this civil action. It is further **ORDERED** that all motions not previously ruled on are hereby **DENIED**.

SIGNED this the 27th day of March, 2024.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. The first name "Richard" is written with a large, prominent "R". The middle initial "A." is written in a smaller, more compact script. The last name "Schell" is written with a large, prominent "S" and a long, sweeping tail that extends to the right.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE